Mandatory Mediation Process Has Been Introduced in Turkey Relating to Certain Consumer Disputes

The Law Amending the Civil Procedure Law and Certain Laws No. 7251 has entered into force on 28 July 2020 and has amended the Consumer Protection Law No. 6502. Accordingly, a mandatory mediation process has been implemented under Article 73/A of the Consumer Protection Law as a prerequisite to file a lawsuit relating to consumer disputes having a monetary claim of 10,390 Turkish Liras and above. Provisional Article 2 of the Consumer Protection Law excludes the application of this mandatory mediation rule to cases pending before the first instance and the regional courts of appeal as well as the Court of Cassation, as of the date of entry into force of this amendment.

The amendment in the Consumer Protection Law further envisages exceptions to the said mandatory mediation process. Pursuant Article 73/A/2 of the Consumer Protection Law, disputes within the competence of consumer arbitration tribunals and the objections made against the decisions of the tribunal, interim injunctions, disputes regarding the suspension of production or sales of goods or recalling of the goods from the market and disputes having a nature of a consumer transaction and arising from rights in rem in relation to a immovable property are not subjected to this mandatory mediation process. It is important to add that pursuant Consumer Protection Law certain consumer disputes are envisaged to be resolved through a mandatory consumer arbitration process.

Under Turkish law, a mandatory mediation condition has also been envisaged relating to commercial disputes and certain employment disputes. In relation to commercial disputes, Turkish Commercial Code Article 5/A is the relevant piece of legislation. It is clearly regulated under this article that as of 01.01.2019, completing the mandatory mediation process prior to court proceedings is a prerequisite for the commercial disputes relating to receivables and compensation of a sum. Relating to employment disputes, the relevant piece of legislation regarding the prerequisite of mediation is the Law on Labour Courts

numbered 7036. Pursuant Article 3/1 of the said law, in relation to legal disputes relating to employee or employer receivables, compensation and reemployment based on law or individual or collective bargaining agreements, having applied to the mediation process prior to court proceedings is regulated as a prerequisite. This procedural requirement does not apply to pecuniary and non-pecuniary compensation claims arising from work accident or occupational disease and declaratory and recourse actions as well as objections related to such claims pursuant Article 3/3 of the Law on Labour Courts.

It is also important to note that pursuant Article 18/A/11 of the Law on Mediation in Civil Disputes, in the event that the mediation process is ended due to the absence of one of the parties in the first meeting without a valid excuse, that party shall be liable from the costs of litigation; whilst the attorney fees cannot be claimed from the other party even where this party eventually partially or completely succeeds in the relevant case. Nevertheless, in relation to consumer disputes, the recent amendment under the Consumer Protection Law envisages an exception under Article 73/A and provides that where the consumer does not attend the first meeting of the mediation process without a valid excuse he/she shall not be liable of the legal costs and the fees of his/her attorney can be collected from the other party where he/she receives a judgement in his/her favour.

Pursuant the *lex fori* principle, where a dispute involving a foreign element is brought before a Turkish court, the prerequisite of having completed the mandatory mediation process shall be fulfilled pursuant the aforementioned laws in relation to consumer, commercial and employment disputes. Where the parties fail to fulfill this prerequisite and initiate court proceedings in the absence of a pre-trial mediation process, the case will be dismissed with no further action pursuant Article 18/A/2 of the Law on Mediation in Civil Disputes.